

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.4845 of 2007

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Between:

Sri Sai Graphics,
represented by its Proprietor,
Vijayawada.

...Petitioner

And

Commercial Tax Officer,
Autonagar, Vijayawada and another.

...Respondents

:: ORDER ::

Counsel for the petitioner : Sri V.V. Ramakrishna for
Sri Dantu Srinivas

Counsel for the respondents : Government Pleader for
Commercial Taxes

13th March, 2007

Per G.S. SINGHVI, C.J.

Whether the discretion exercised by Additional Commissioner (CT), Legal, in the office of the Commissioner of Commercial Taxes, Andhra Pradesh (respondent No.2) to decline the petitioner's prayer for staying the recovery of the balance tax in relation to the assessment year 2004-2005 is vitiated by an error of law warranting interference under Article 226 of the Constitution is the question, which arises for determination in this petition filed for quashing order dated 6-2-2007 passed by respondent No.2.

The petitioner is a proprietary concern of Shri M.V. Subba Rao Chowdary. It is engaged in the business of printing and supply of books and is registered as dealer under the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'the Act'). For assessment year 2004-2005, Commercial Tax Officer, Vijayawada (respondent No.1) determined the petitioner's net turnover as Rs.85,40,560/- and held it liable to pay tax of Rs.6,83,245/-. After depositing a sum of Rs.61,225/- (12.5% of the tax liability determined by respondent No.2), the petitioner filed an appeal under Section 19 of the Act. It also applied for stay of the recovery of balance tax. Appellate Deputy Commissioner (CT), Vijayawada (hereinafter described as 'the Appellate Authority') declined the petitioner's prayer for stay albeit without assigning reasons. Writ Petition No.14196 of 2006 filed by the petitioner was disposed of by a Division Bench of this Court on 13-7-2006 by directing the respondents not to recover the disputed tax subject to the condition that the petitioner shall deposit 50% of the amount within a period of six weeks. The Division Bench also directed that while computing the 50% amount, the tax already deposited by the petitioner shall be given due credit.

After disposal of the writ petition preferred by the petitioner

against the interlocutory order, the Appellate Authority vide its order dated 19-9-2006 remanded the case to the assessing authority for re-assessment. As a sequel to this, respondent No.1 re-determined the tax liability of the petitioner and declared that it is liable to pay tax of Rs.3,60,170/-.

In the meanwhile, the petitioner challenged the appellate order by filing second appeal under Section 21 of the Act. It also filed an application for stay of recovery of the balance tax amounting to Rs.1,41,735/-. Respondent No.2 dismissed the stay application by observing that the petitioner has failed to make out a case for that purpose. The relevant portions of order dated

6-2-2007 passed by respondent No.2 are extracted below:

“... .. The Assessing Authority levied tax on the DTP charges and Xerox charges and subjected the remaining turnover to tax u/Sec.5-F of the APGST Act. The Appellate Authority having verified the copies of the bills produced by the petitioner remanded the case back to the assessing authority with certain directions to grant further exemptions. It is further mentioned in the Appeal order that the dealer has printed receipt books, bill books etc., to others and realised the amounts which is not disputed by the dealers but it amounts to sale of printed receipt books etc., which is to be treated as contract of sale as decided by the Apex Court and therefore it is taxable to be assessed to tax as unclassified item.

The petitioner has not filed any other documentary evidence in support of their contention for granting stay of collection of the balance disputed taxes.

The jurisdictional High Court in the case of M/s.UNITY CONSTRUCTIONS PVT. LTD., v. STATE OF A.P. in W.P.No.3163/2006 held that interlocutory intervention would stultify recovery measures affecting the public interest adversely. In view of the above, I do not see that the petitioner has case for granting any stay.”

We have heard learned counsel for the parties. In our opinion,

the order under challenge does not suffer from any jurisdictional infirmity or patent legal error warranting this Court's interference with the discretion exercised by respondent No.2 in declining the petitioner's prayer for stay. The averments contained in paragraph 6 of the affidavit filed by Shri M.V. Subba Rao Chowdary shows that in furtherance of the direction given by the Appellate Authority, respondent No.1 has already passed fresh order of assessment creating a tax liability of Rs.3,60,170/- against the petitioner. The petitioner can challenge the order of re-assessment by filing appeal under Section 19 of the Act. Therefore, we do not see any justification, legal or otherwise, for entertaining this petition or for exercise of the power of judicial review by this Court at the interlocutory stage of the matter.

De hors the above, we are convinced that the reasons assigned by respondent No.2 for refusing to stay the recovery of the balance tax are legally correct. It is neither the pleaded case of the petitioner nor any material has been produced before the Court to show that the Appellate Authority had not verified the bills produced by it. Therefore, the tax liability created by respondent No.1 was not illegal per se and respondent No.2 rightly refused to entertain its request for stay of the balance tax.

For the reasons stated above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.6205 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

13th March, 2007

C.V.NAGARJUNA REDDY, J.

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